

THE HON. JAMES L. ROBERT

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
SEATTLE DIVISION

SECURITIES AND EXCHANGE COMMISSION,

Civil Action No. C-15-1350-JLR

Plaintiff,

vs.

PATH AMERICA, LLC; PATH AMERICA SNO CO
LLC; PATH AMERICA FARMER'S MARKET, LP;
PATH AMERICA KING CO LLC; PATH
AMERICA TOWER, LP; PATH TOWER
SEATTLE, LP; POTALA TOWER SEATTLE, LLC;
and LOBSANG DARGEY,

~~PROPOSED~~ ORDER GRANTING
MOTION FOR PRELIMINARY
INJUNCTION

Defendants, and

POTALA SHORELINE, LLC; and POTALA
VILLAGE KIRKLAND, LLC,

Relief Defendants.

1 This matter came before the Court on the motion of plaintiff Securities and Exchange
2 Commission (the "Commission") for an order of preliminary injunction and other ancillary
3 relief, to restrain and enjoin Defendants Lobsang Dargey; Path America, LLC; Path America
4 SnoCo LLC; Path America Farmer's Market, LP; Path America KingCo LLC; Path America
5 Tower, LP; Path Tower Seattle, LP; and Potala Tower Seattle, LLC (collectively
6 "Defendants") during the pendency of this case. On August 24, 2015, the Court granted the
7 Commission's Motion for Temporary Restraining Order. *See* Docket No. 9. The current
8 motion seeks orders: (1) Preliminarily enjoining Defendants from engaging in specified
9 conduct; (2) Freezing Defendants' assets and specified assets of Relief Defendants Potala
10 Shoreline, LLC and Potala Village Kirkland, LLC while this case is pending or until further
11 order of the Court; (3) Freezing assets currently held in escrow in connection with
12 investments in Path America Tower, LP and Path Tower Seattle, LP and Path America
13 Farmer's Market, LP while this case is pending or until further order of the Court; (4)
14 Requiring Defendant Dargey to repatriate assets; (5) Prohibiting the destruction of documents;
15 and (6) Requiring Defendant Path America, LLC to prepare an accounting of all money
16 obtained from investors.

17 The Court, having considered: (1) the complaint filed by the Commission in this case;
18 (2) the Commission's Motion for Preliminary Injunction and the Memorandum of Law in
19 support; (3) the Declarations of Michael D. Foley, Steven D. Buchholz, and Bernard B.
20 Smyth, and all exhibits attached to those declarations; and any proceedings before the Court,
21 finds that:

22 1. This Court has jurisdiction over the subject matter of this action, and as to all
23 parties, Defendants and Relief Defendants, and venue properly lies in this District.

24 2. The Commission has made a sufficient and proper showing in support of the
25 relief granted herein, as required by Section 20(b) of the Securities Act of 1933 ("Securities
26 Act"), 15 U.S.C. § 77t(b), and Section 21(d) of the Securities Exchange Act of 1934
27 ("Exchange Act"), 15 U.S.C. § 78u(b), by evidence establishing a prima facie case and a
28 reasonable likelihood that Defendants have engaged in, are engaging in, are about to engage

1 in, and will continue to engage in, unless restrained and enjoined by order of this Court,
2 transactions, acts, practices and courses of business that constitute violations of Section 17(a)
3 of the Securities Act, 15 U.S.C. § 77q(a); Section 10(b) of the Exchange Act, 15 U.S.C. §
4 78j(b); and Exchange Act Rule 10b-5, 17 C.F.R. § 240.10b-5; and that Relief Defendants are
5 in possession of the proceeds of those violations and have been unjustly enriched.

6 3. The Commission has demonstrated a likelihood of success on the merits of its
7 action and that the balance of hardships weighs in its favor. With respect to the balance of
8 hardships, the public interest weighs strongly in favor of issuance of injunctive relief.

9 4. Good cause exists to believe that, unless restrained and enjoined by order of
10 this Court, Defendants and Relief Defendants will dissipate, conceal, or transfer from the
11 jurisdiction of this Court assets which could be subject to an order directing disgorgement or
12 the payment of civil money penalties in this action. It is therefore appropriate for the Court to
13 convert the previously ordered freeze on the assets and accounts of Defendants and Relief
14 Defendants into preliminary relief that remains in place while this action is pending, so that
15 prompt service on appropriate financial institutions, and other persons, can be made, thus
16 preventing the dissipation of assets and preserving the status quo.

17 5. Good cause exists to believe that an order requiring Defendant Lobsang
18 Dargey to repatriate assets moved overseas that originated with investors associated with the
19 Path America transactions, as described in Plaintiff's Complaint, is necessary to effectuate
20 and ensure compliance with the freeze imposed on the Defendants' and Relief Defendants'
21 assets and accounts.

22 6. Good cause exists to believe that, unless restrained and enjoined by order of
23 this Court, documents relevant to this action may be altered, destroyed or become unavailable
24 for discovery.

25 7. Good cause exists to believe that an order requiring Defendant Path America to
26 provide a verified accounting of all assets, money, and property obtained directly or indirectly
27 from any investors associated with the Path America transactions, as described in the
28 Plaintiff's Complaint, and received, spent, or held directly or indirectly by each of the

1 Defendants and Relief Defendants, or by others for their direct and indirect beneficial interest,
2 is necessary to effectuate and ensure compliance with the freeze imposed on their assets.

3 I.

4 THEREFORE IT IS HEREBY ORDERED that the SEC's Motion for Preliminary
5 Injunction is GRANTED.

6 II.

7 IT IS FURTHER ORDERED that Defendants Lobsang Dargey; Path America, LLC;
8 Path America SnoCo LLC; Path America Farmer's Market, LP; Path America KingCo LLC;
9 Path America Tower, LP; Path Tower Seattle, LP; and Potala Tower Seattle, LLC are
10 preliminarily restrained and enjoined until further order of the Court from, directly or
11 indirectly, in the offer or sale of any securities, by the use of any means or instruments of
12 transportation or communication in interstate commerce or by the use of the mails:

13 A. Employing any device, scheme or artifice to defraud;

14 B. Obtaining money or property by means of any untrue statement of a
15 material fact or any omission to state a material fact necessary in order to make the
16 statements made, in light of the circumstances under which they were made, not
17 misleading; or

18 C. Engaging in any transaction, practice, or course of business which
19 operates or would operate as a fraud or deceit upon the purchaser;
20 in violation of Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a).

21 IT IS FURTHER ORDERED that, as provided in Federal Rule of Civil Procedure
22 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this
23 order by personal service or otherwise: (a) Defendants' officers, agents, servants, employees,
24 and attorneys; and (b) other persons in active concert or participation with Defendants or with
25 anyone described in (a).

26 III.

27 IT IS FURTHER ORDERED that Defendants Lobsang Dargey; Path America, LLC;
28 Path America SnoCo LLC; Path America Farmer's Market, LP; Path America KingCo LLC;

1 Path America Tower, LP; Path Tower Seattle, LP; and Potala Tower Seattle, LLC are
2 preliminarily restrained and enjoined until further order of the Court from, directly or
3 indirectly, in connection with the purchase or sale of any security, by the use of any means or
4 instrumentality of interstate commerce, or of the mails, or of any facility of any national
5 securities exchange:

6 A. Employing any device, scheme or artifice to defraud;

7 B. Making any untrue statement of a material fact or omitting to state a
8 material fact necessary in order to make the statements made, in the light of the
9 circumstances under which they were made, not misleading; or

10 C. Engaging in any act, practice, or course of business which operates or
11 would operate as a fraud or deceit upon any person;

12 in violation of Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5
13 thereunder, 17 C.F.R. § 240.10b-5.

14 IT IS FURTHER ORDERED that, as provided in Federal Rule of Civil Procedure
15 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this
16 order by personal service or otherwise: (a) Defendants' officers, agents, servants, employees,
17 and attorneys; and (b) other persons in active concert or participation with Defendants or with
18 anyone described in (a).

19 IV.

20 IT IS FURTHER ORDERED that Defendants Lobsang Dargey; Path America, LLC;
21 Path America SnoCo LLC; Path America Farmer's Market, LP; Path America KingCo LLC;
22 Path America Tower, LP; Path Tower Seattle, LP; and Potala Tower Seattle, LLC are
23 preliminarily restrained and enjoined until further order of the Court from, directly or
24 indirectly participating in the issuance, offer, or sale of any security of any entity controlled
25 by, or under joint control with, any of them, including but not limited to securities of Path
26 America, LLC; Path America SnoCo LLC; Path America Farmer's Market, LP; Path America
27 KingCo LLC; Path America Tower, LP; and Path Tower Seattle, LP.

1 IT IS FURTHER ORDERED that, as provided in Federal Rule of Civil Procedure
2 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this
3 order by personal service or otherwise: (a) Defendants' officers, agents, servants, employees,
4 and attorneys; and (b) other persons in active concert or participation with Defendants or with
5 anyone described in (a).

6 V.

7 IT IS FURTHER ORDERED that Defendants Lobsang Dargey; Path America, LLC;
8 Path America SnoCo LLC; Path America Farmer's Market, LP; Path America KingCo LLC;
9 Path America Tower, LP; Path Tower Seattle, LP; and Potala Tower Seattle, LLC are
10 preliminarily restrained and enjoined until further order of the Court from directly or
11 indirectly soliciting any person or entity to purchase or sell any security.

12 IT IS FURTHER ORDERED that, as provided in Federal Rule of Civil Procedure
13 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this
14 order by personal service or otherwise: (a) Defendants' officers, agents, servants, employees,
15 and attorneys; and (b) other persons in active concert or participation with Defendants or with
16 anyone described in (a).

17 VI.

18 IT IS FURTHER ORDERED that, except as otherwise ordered by this Court, an
19 immediate freeze shall be placed on:

20 a. All monies and assets (with an allowance for necessary and reasonable living
21 expenses to be granted only upon good cause shown by application to the Court with notice to
22 and an opportunity for the SEC to be heard) in all accounts at any bank, financial institution
23 or brokerage firm, all certificates of deposit, and other funds or assets, held in the name of, for
24 the benefit of, or over which account authority is held by Defendants Lobsang Dargey; Path
25 America, LLC; Path America SnoCo LLC; Path America Farmer's Market, LP; Path America
26 KingCo LLC; Path America Tower, LP; Path Tower Seattle, LP; and Potala Tower Seattle,
27 LLC; and
28

b. Those monies and assets that constitute or are derived from the proceeds of, or are otherwise related to, the activities set forth in the Complaint in accounts at any bank, financial institution or brokerage firm, all certificates of deposit, and other funds or assets, including real or personal property, held in the name of, for the benefit of, or over which account authority is held by Relief Defendants Potala Shoreline, LLC and Potala Village Kirkland, LLC; including but not limited to the accounts listed below:

Account Name	Bank	Account Number
Path America, LLC	East West Bank	XXXXXXX3648
Path America Farmer's Market, LP	East West Bank	XXXXXXX3663
Potala Tower Seattle, LLC	East West Bank	XXXXXXX2490
Path America Tower, LP	East West Bank	XXXXXXX3084
Potala Shoreline, LLC	East West Bank	XXXXXXX4785
Path Tower Seattle, LP	East West Bank	XXXXXXX5006
Lobsang Dargey	Bank of America	XXXX1856
Potala Village Kirkland, LLC	American West Bank	XXXXXXXX0150

Any bank, financial institution or brokerage firm holding such monies and assets described above, that receives actual notice of this Order, by personal service or otherwise, including facsimile transmissions, electronic mail, or overnight delivery service, shall hold and retain within its control and prohibit the withdrawal, removal, transfer or other disposal of any such funds or other assets, except as otherwise ordered by this Court.

VII.

IT IS FURTHER ORDERED that an immediate freeze shall be placed on all monies and assets held in accounts at any bank or financial institution in connection with escrow agreements relating to Path America Tower, LP; Path Tower Seattle, LP; or Path America Farmer's Market, LP; including but not limited to Central Escrow, Inc. escrow number 244000-MM (for Path America Tower, LP), escrow number 263000-MM (for Path Tower Seattle, LP), and escrow number 202000-MM (for Path America Farmer's Market, LP). Monies and assets held in such accounts shall not be released even if the conditions for release in the escrow agreements controlling the accounts are met, except as otherwise ordered by this Court.

VIII.

IT IS FURTHER ORDERED that, within seven (7) days from the entry of this Order, Defendant Lobsang Dargey shall transfer to the registry of this Court assets, funds and other property held in foreign locations in the name of any Defendant or any person acting in active concert or participation with any of them, or for the benefit or under the direct or indirect control of any of them, or over which any of them exercises control or signatory authority, whether by wire transfer, third-party payment processor or otherwise, at the direction of either Defendants or any of their agents, representatives, advisors, or anyone acting in active concert or participation with any of them.

IX.

IT IS FURTHER ORDERED that Defendant Path America, LLC, within seven (7) days of receiving actual notice of this Order, by personal service or otherwise, unless it has previously provided the accounting as previously ordered, shall prepare and deliver to the SEC a detailed and complete accounting, which shall include:

1. A complete schedule of all transfers or payments of funds to Defendants, and to any other entity controlled by them, from investors in connection with the misconduct described in the Complaint (the identification shall include the amount of each such transfer or payment, the date of the transfer or payment, and the name, address, account number and financial institution of the party making and the party receiving the transfer or payment);

2. A complete schedule, in detail, of the precise disposition of each transfer or payment identified in response to paragraph 1 above and all assets derived therefrom, including but not limited to:

a. the nature and results of any investment in which the funds were used;

b. any subsequent transfer or payment of the funds (the identification shall include the amount of each such transfer or payment, the date of the transfer or payment, the name, address, account number and financial institution of the party making and receiving the transfer or payment, and the reason for the transfer or payment); and

1 c. any fees or expenses charged and a detailed statement of the nature and
2 purpose of such fees and expenses.

3 3. A complete schedule identifying, by name and address, all persons, entities and
4 accounts currently holding funds or assets derived from the transfers or payments described in
5 paragraph 1 above and the reason each received the funds or assets (the identification shall
6 include the amount each received, the date received, the reason received, the institution and
7 account number or location in which the funds or other assets are held and the name, address,
8 account number and financial institution of the person or entity who provided each with the
9 funds or other assets);

10 4. A complete schedule identifying assets of every type and description with a
11 value of at least five hundred dollars (\$500) presently owned by or held for the direct or
12 indirect benefit, or subject to the direct or indirect control, of Defendants or Relief
13 Defendants, whether in the United States or elsewhere; and,

14 5. A complete schedule of all accounts in the name of Defendants or Relief
15 Defendants, held at any bank, securities, and other financial institution, identified by
16 institution, branch address and account number, from February 1, 2012 through the present.

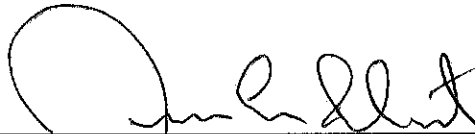
17 Such accounting shall be filed with the Court and a copy shall be delivered to the SEC
18 to the attention of Susan F. LaMarca. After completion of the accounting, Defendant Path
19 America, LLC shall produce to the SEC at a time agreeable to the SEC, all books, records and
20 other documents supporting or underlying the accounting.

21 X.

22 IT IS FURTHER ORDERED that, except as otherwise ordered by this Court, each of
23 the Defendants Lobsang Dargey; Path America, LLC; Path America SnoCo LLC; Path
24 America Farmer's Market, LP; Path America KingCo LLC; Path America Tower, LP; Path
25 Tower Seattle, LP; and Potala Tower Seattle, LP; and Relief Defendants Potala Shoreline,
26 LLC and Potala Village Kirkland, LLC, are preliminarily restrained and enjoined until further
27 order of the Court from, directly or indirectly: destroying, mutilating, concealing, transferring,
28 altering, or otherwise disposing of, in any manner, any documents, which includes all books,

1 records, computer programs, computer files, computer printouts, contracts, emails,
2 correspondence, memoranda, brochures, or any other documents of any kind in their
3 possession, custody or control, however created, produced, or stored (manually, mechanically,
4 electronically, or otherwise), pertaining in any manner to Defendants Lobsang Dargey; Path
5 America, LLC; Path America SnoCo LLC; Path America Farmer's Market, LP; Path America
6 KingCo LLC; Path America Tower, LP; Path Tower Seattle, LP; and Potala Tower Seattle,
7 LP.

8
9
10 Dated this 6th day of ~~September~~ ^{October}, 2015

11
12
13
14 
15 UNITED STATES DISTRICT JUDGE
16
17
18
19
20
21
22
23
24
25
26
27
28

1 Presented by:

2
3 s/ Susan F. LaMarca

4 Susan F. LaMarca

Bernard B. Smyth

5 Attorneys for Plaintiff

SECURITIES AND EXCHANGE COMMISSION

6 44 Montgomery Street, Suite 2800

7 San Francisco, CA 94104

(415) 705-2500

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28